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EXAMINER

CRAIG, DWIN M

ART UNIT	PAPER NUMBER
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2123

DATE MAILED: 12/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/577,118

Applicant(s)

ODHNER ET AL.

Examiner

Dwin M Craig

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3,9,10,29 and 34-37 is/are allowed.
- 6) ☒ Claim(s) 1,2,4-8,11-28 and 30-33 is/are rejected.
- 7) ☒ Claim(s) 39-41 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

1. Claims 1-41 have been presented for reconsideration in view of Applicant's amended Claims.

Response to Arguments

2. Applicants arguments filed on 29 September 2003 have been fully considered. Examiners response is as follows:

2.1 Regarding Applicants amendment to the specification to properly incorporate essential subject matter:

The Examiner thanks the Applicants for adding the correct non-provisional patent application number to page 3 of the specification and the Examiner withdraws the earlier objection to the specification.

2.2 Regarding Applicants response to the 35 U.S.C. 112 rejections to Claims 11 and 17:

The Examiner asserts that Applicant's arguments are persuasive in regards to the earlier rejections of Claims 11 and 17 and the Examiner thanks the Applicants for amending the claim language to remedy to previous claim rejections. The Examiner asserts that Applicants arguments are persuasive and withdraws the earlier 35 U.S.C. 112 rejections of claims 11 and 17.

2.3 Regarding Applicants response to the 35 U.S.C. 103 rejections:

Applicants have argued that:

In contrast to Bliat and Asawa., claim 1 recites "A method for deriving server resource utilization estimates for a server cluster, the method comprising-recording server cluster data during operation of the server cluster, at least some of the server cluster data indicating server resource parameter values; using a load simulation tool that, using the recorded data, determines a maximum load that can be handled by the server cluster; specifying a load to be handled by the server cluster; and deriving server resource utilization estimates corresponding to the

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specified load", which is not taught, suggested or motivated by the cited references.

Bhat does not address "recording server cluster data during operation of the server cluster", as recited in claim 1. Bhat is concerned with projecting or planning server capacity requirements for a server in response to client needs input by that prospective client (see, e.g., col. 1, line 51 et seq.; "Prompt For User Specifications", element 26, Fig. 2A; col. 3, lines 25-32, esp. 29), and providing pricing estimates for a server. Bhat is silent with respect to recording server cluster data, doing so during operation, or, for that matter, server clusters. In fact, Bhat is void of the terms "recording" or "storing", and is also void of the term "cluster".

Asawa fails to cure these deficiencies. Asawa uses the term "cluster" exclusively in the context of data clusters and analysis of data having data clusters therein (see, e.g., col. 9, lines 12-15, describing clustering of data points within a measurement interval). Asawa describes a server 14 (col. 1, line 36) serving a plurality of user nodes 20-24 and describes recording data "that apply to the individual user nodes 20-24" (lines 56-57).

Claim 26 recites "A simulation tool for use in determining server resource utilization estimates in a server cluster, the load simulation tool comprising: a user interface configured to receive data input from a user; at least one filter or monitor configured to record operational data from one or more of the servers in the server cluster, the simulation tool being configured to create a test script from the recorded data and the received data, and to run the test script from a master client connected to the server cluster to simulate load and other server conditions that existed when the operational data was recorded; and the user interface being further configured to display utilization of server resources during the running of the test script", which is not taught, disclosed, suggested or motivated by the cited references, alone or in any proper combination.

As noted above, Asawa does not disclose or describe any server cluster or anything related to a server cluster. As noted in the Office Action (p. 10), Schwaller also fails to describe any server cluster or anything related to a server cluster. As a result, it is inconceivable that combining or modifying the teachings of these references could provide the subject matter recited in claim 26.

The Examiner has found Applicants arguments to be persuasive in that the cited prior art references are deficient in that they do not teach server cluster performance monitoring and withdraws the earlier 35 U.S.C. 103 rejections of Applicant's Claims.

An updated search has revealed new art.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Independent **Claim 1** and dependent **Claims 12-14, 16, 18, 24 and 25** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Bhat U.S. patent 5,668,995** in view of **Asawa U.S. Patent 6,108,800** and in further view of **Kutcher U.S. Patent 6,301,615**.

3.1 As regards independent **Claim 1** the *Bhat* reference discloses a method for deriving server resource utilization estimates, recording server data, including server resource parameter values, using a load simulation tool, specifying a load, and determining the utilization based on that load (**Figures 2A, 2B, Col. 1 Lines 50-67, Col. 2 Lines 1-10, Col. 3 Lines 1-15, Col. 3 Lines 25-38, Col. 3 Lines 56-67, Col. 4 Lines 1-3, Col. 4 Lines 31-57**).

However, the *Bhat* reference does not expressly disclose a server cluster, and recording data during the operation of the server cluster or a cluster controller.

The *Asawa* reference discloses a server cluster and recording data during operation of the server cluster (**Figures 1-3, Col. 2 Lines 48-67, Col. 3 Lines 1-9, Col. 8 Lines 32-63**).

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It would have been obvious, to one of ordinary skill in the art, at the time of the invention, to have modified the *Bhat* reference with the *Asawa* reference because (*motivation to combine*) an artisan would be motivated to know of the techniques disclosed in the *Asawa* reference to ensure that the quality of service that the end users (*customers*) experience is good and to ensure that the users (*customers*) of these servers are able to quickly get E-Mail, transfer files and generally get their network service needs taken care of in a timely manner, (*Asawa Col. 1 Lines 12-60*). The Examiner asserts that Information Technology (IT) service hosting is a very competitive industry and that providing the ability to System Administrators to determine if their existing (IT) infrastructure can handle current and projected needs is very critical in being successful in the market place and therefore an artisan would be motivated to learn about the techniques disclosed in the *Asawa* reference.

The *Bhat* reference discloses that there is a need in the art to meet customer specific needs in client-server environments (**Col. 1 Lines 24-34**).

An ordinary artisan would have been motivated to search the related art for a method of monitoring the performance of a cluster of servers in order to overcome the express deficiencies of the reference in regards to a server cluster performance monitor and a cluster controller. In the related arts of Computer Network Monitoring the *Kutcher* reference discloses performance monitoring of a server cluster (**Figures 1-5, Col. 3 Lines 54-65**).

Thus, it would have been obvious, to one of ordinary skill in the art, at the time the invention was made, to have combined the capacity planning of the *Bhat* reference with the performance monitoring of the *Kutcher* reference because, only by monitoring the performance of an entire cluster of servers is there an accurate assessment of what the true performance will

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be and this is essential to meet projected needs of a server in order to satisfy present and future performance requirements (**Kutcher Col. 1 Lines 55-65**).

3.2 As regards dependent **Claims 12, 14 and 18** the *Bhat* reference discloses processor utilization (**Figure 2B Item 52**).

3.3 As regards dependent **Claims 13 and 24** the *Bhat* reference does not expressly disclose deriving general server utilization.

The *Asawa* reference discloses deriving general server utilization (**Col. 8 Lines 32-63**).

It would have been obvious, to one of ordinary skill in the art, at the time of the invention, to have modified the *Bhat* reference with the *Asawa* reference because (*motivation to combine*) an artisan would be motivated to know of the techniques disclosed in the *Asawa* reference to ensure that the quality of service that the end users (*customers*) experience is good and to ensure that the users (*customers*) of these servers are able to quickly get E-Mail, transfer files and generally get their network service needs taken care of in a timely manner, (***Asawa Col. 1 Lines 12-60***). The Examiner asserts that Information Technology (**IT**) service hosting is a very competitive industry and that providing the ability to System Administrators to determine if their existing (**IT**) infrastructure can handle current and projected needs is very critical in being successful in the market place and therefore an artisan would be motivated to learn about the techniques disclosed in the *Asawa* reference.

3.4 As regards dependent **Claim 16** the *Bhat* reference discloses memory utilization (**Col. 1 Lines 50-67, Col. 2 Lines 1-10**).

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3.5 As regards dependent **Claim 25** the *Bhat* reference discloses (**Col. 2 Lines 30-43**).

4. Independent **Claims 28 and 38** and Dependent **Claims 30, 31, 32 and 33** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Bhat U.S. patent 5,668,995** in view of **Asawa U.S. Patent 6,108,800** and in further view of **Schwaller et al. U.S. Patent 5,838,919** and in further view of **Kutcher U.S. Patent 6,301,615**.

4.1 As regards independent **Claims 28 and 38**, the *Bhat* reference discloses a system (**Figure 1**) and a capacity planner (**Col. 2 Lines 30-44**) and a method for deriving server resource utilization estimates, recording server data, including server resource parameter values, using a load simulation tool, specifying a load, and determining the utilization based on that load (**Figures 2A, 2B, Col. 1 Lines 50-67, Col. 2 Lines 1-10, Col. 3 Lines 1-15, Col. 3 Lines 25-38, Col. 3 Lines 56-67, Col. 4 Lines 1-3, Col. 4 Lines 31-57**).

However, the *Bhat* reference does not expressly disclose a server cluster, and recording data during the operation of the server cluster or a cluster controller.

The *Asawa* reference discloses a server cluster and recording data during operation of the server cluster (**Figures 1-3, Col. 2 Lines 48-67, Col. 3 Lines 1-9, Col. 8 Lines 32-63**) and filtering of server data (**Figure 3 Item 82 and 84**).

It would have been obvious, to one of ordinary skill in the art, at the time of the invention, to have modified the *Bhat* reference with the *Asawa* reference because (*motivation to combine*) an artisan would be motivated to know of the techniques disclosed in the *Asawa* reference to ensure that the quality of service that the end users (*customers*) experience is good

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and to ensure that the users (*customers*) of these servers are able to quickly get E-Mail, transfer files and generally get their network service needs taken care of in a timely manner, (*Asawa Col. 1 Lines 12-60*). The Examiner asserts that Information Technology (IT) service hosting is a very competitive industry and that providing the ability to System Administrators to determine if their existing (IT) infrastructure can handle current and projected needs is very critical in being successful in the market place and therefore an artisan would be motivated to learn about the techniques disclosed in the *Asawa* reference.

The *Bhat* reference discloses that there is a need in the art to meet customer specific needs in client-server environments (**Col. 1 Lines 24-34**).

An ordinary artisan would have been motivated to search the related art for a method of monitoring the performance of a cluster of servers in order to overcome the express deficiencies of the reference in regards to a server cluster performance monitor and a cluster controller. In the related arts of Computer Network Monitoring the *Kutcher* reference discloses performance monitoring of a server cluster (**Figures 1-5, Col. 3 Lines 54-65**).

Thus, it would have been obvious, to one of ordinary skill in the art, at the time the invention was made, to have combined the capacity planning of the *Bhat* reference with the performance monitoring of the *Kutcher* reference because, only by monitoring the performance of an entire cluster of servers is there an accurate assessment of what the true performance will be and this is essential to meet projected needs of a server in order to satisfy present and future performance requirements (**Kutcher Col. 1 Lines 55-65**).

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The *Bhat* reference does not expressly disclose using a script or having a Network Monitor.

The *Schwaller et al.* reference discloses using a script for Network Performance Testing (**Figure 7 Item 96**) and a Network Monitor (**Col. 1 Lines 53-67, Col. 2 Lines 1-21, Col. 3 Lines 57-67, Col. 4 Lines 1-4**).

It would have been obvious, to one of ordinary skill in the art, at the time of the invention, to have modified the *Bhat* reference with the *Schwaller et al.* reference because (*motivation to combine*) the *Schwaller et al.* reference discloses a method to monitor a networks performance using multiple protocols that more accurately model network performance using actual network conditions (**Col. 3 Lines 10-26**). The *Schwaller et al.* reference is classified in the 709/224 Computer network monitoring section of the Classification manual. An artisan of the Networking Technology Art would be motivated to learn about the techniques disclosed in this area of technology. The Examiner asserts that this area of Information Technology is very competitive and therefore an artisan in this area of art would be motivated to improve the accuracy of the Network Monitoring and performance evaluation tools being used to measure a particular Network.

4.2 As regards dependent **Claim 30** the *Bhat* reference discloses storing data in memory (**Figure 1, Col. 2 Lines 31-43**).

4.3 As regards dependent **Claim 31** the *Bhat* reference does not expressly disclose scripts.

The *Schwaller et al.* reference discloses using a script (**Col. 10 Lines 28-67, All of Columns 11-26**).

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It would have been obvious, to one of ordinary skill in the art, at the time of the invention, to have modified the *Bhat* reference with the *Schwaller et al.* reference because (*motivation to combine*) the *Schwaller et al.* reference discloses a method to monitor a networks performance using multiple protocols that more accurately model network performance using actual network conditions (**Col. 3 Lines 10-26**). The *Schwaller et al.* reference is classified in the 709/224 Computer network monitoring section of the Classification manual. An artisan of the Networking Technology Art would be motivated to learn about the techniques disclosed in this area of technology. The Examiner asserts that this area of Information Technology is very competitive and therefore an artisan in this area of art would be motivated to improve the accuracy of the Network Monitoring and performance evaluation tools being used to measure a particular Network.

4.4 As regards dependent **Claim 32** the *Bhat* reference does not expressly disclose simulation of a cluster of servers.

The *Asawa* reference discloses the simulation of a cluster of servers (**Figures 1-3, Col. 8 Lines 39-63**).

It would have been obvious, to one of ordinary skill in the art, at the time of the invention, to have modified the *Bhat* reference with the *Asawa* reference because (*motivation to combine*) an artisan would be motivated to know of the techniques disclosed in the *Asawa* reference to ensure that the quality of service that the end users (*customers*) experience is good and to ensure that the users (*customers*) of these servers are able to quickly get E-Mail, transfer files and generally get their network service needs taken care of in a timely manner, (*Asawa Col. 1 Lines 12-60*). The Examiner asserts that Information Technology (IT) service hosting is a very

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competitive industry and that providing the ability to System Administrators to determine if their existing (IT) infrastructure can handle current and projected needs is very critical in being successful in the market place and therefore an artisan would be motivated to learn about the techniques disclosed in the *Asawa* reference.

4.5 As regards dependent **Claim 33** the *Bhat* reference does not expressly disclose scripts and simulating clustered servers.

As regards the limitation of running scripts (*see paragraph 4.3 above.*)

As regards the limitation of simulating clusters of servers (*see paragraph 4.4 above.*)

5. Independent **Claim 26** and dependent **Claim 27** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Schwaller et al. U.S. Patent 5,838,919** in view of **Asawa U.S. Patent 6,108,800** and in further view of **Kutcher U.S. Patent 6,301,615**.

5.1 As regards independent **Claim 26** the *Schwaller et al.* reference discloses a simulation tool (**Col. 1 Lines 36-52, Col. 7 Lines 63-67, Col. 8 Lines 1-27**), a user interface (**Col. 27 Lines 23-38**), and a monitor (**Col. 1 Lines 53-67, Col. 2 Lines 1-21, Col. 3 Lines 57-67, Col. 4 Lines 1-4**), and test scripts which are run and observed with the monitor (**Col. 8 Lines 39-67, All of Columns 9-26**).

However, the *Schwaller et al.* reference does not expressly disclose a server cluster and using a filter or a cluster controller.

The *Asawa* reference discloses a server cluster (**Col. 8 Lines 33-63**), and using a filter (**Figure 3 Items 80 and 82**).

It would have been obvious, to one of ordinary skill in the art, at the time of the invention, to have modified the *Schwaller et al.* reference with the *Asawa* reference because (*motivation to combine*) an artisan would be motivated to know of the techniques disclosed in the *Asawa* reference to ensure that the quality of service that the end users (*customers*) experience is good and to ensure that the users (*customers*) of these servers are able to quickly get E-Mail, transfer files and generally get their network service needs taken care of in a timely manner, (*Asawa Col. 1 Lines 12-60*). The Examiner asserts that Information Technology (IT) service hosting is a very competitive industry and that providing the ability to System Administrators to determine if their existing (IT) infrastructure can handle current and projected needs is very critical in being successful in the market place and therefore an artisan would be motivated to learn about the techniques disclosed in the *Asawa* reference.

The *Schwaller et al.* reference discloses that there is a need in the art for ways to monitor complex network topologies (**Col. 1 Lines 36-52**).

An ordinary artisan would have been motivated to search the related art for a method of monitoring the performance of a cluster of servers in order to overcome the express deficiencies of the reference in regards to a server cluster performance monitor and a cluster controller. In the related arts of Computer Network Monitoring the *Kutcher* reference discloses performance monitoring of a server cluster (**Figures 1-5, Col. 3 Lines 54-65**).

Thus, it would have been obvious, to one of ordinary skill in the art, at the time the invention was made, to have combined the simulation tool of the *Schwaller et al.* reference with the performance monitoring of the *Kutcher* reference because, only by monitoring the performance of an entire cluster of servers is there an accurate assessment of what the true

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performance will be and this is essential to meet projected needs of a server in order to satisfy present and future performance requirements (**Kutcher Col. 1 Lines 55-65**).

5.2 As regards dependent **Claim 27** the *Schwaller et al.* reference discloses modifying scripts and observing the results (**Figure 7, Col. 34 Lines 28-42, Col. 36 Lines 26-38, Col. 37 Lines 60-67**).

6. Dependent **Claims 2, 4, 15, 19 and 20** are being rejected under 35 U.S.C. 103(a) as being unpatentable over **Bhat U.S. patent 5,668,995** in view of **Asawa U.S. Patent 6,108,800** and in further view of **Kutcher U.S. Patent 6,301,615** and in further view of **Datta et al. U.S. Patent 6,209,033**.

6.1 As regards the limitations in Independent **Claim 1** see paragraph **3.1** above.

6.2 As regards dependent **Claim 2**, the *Bhat* reference does not expressly disclose displaying server resource estimates and recommending a plan to optimize processing of the specified load.

The *Datta et al.* reference discloses displaying server resource estimates (**Figure 7**), and recommending a way to optimize the network (**Figure 6 Item 64**).

It would have been obvious, to one of ordinary skill in the art, at the time of the invention, to have modified the *Bhat* reference with the *Datta et al.* reference because (*motivation to combine*) the *Datta et al.* reference discloses a method of analyzing alternative configurations (**Col. 2 Lines 48-52**).

6.3 As regards dependent **Claim 4** the *Bhat* reference discloses no-volatile memory (**Figure 1 Item 14**).

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6.4 As regards dependent **Claims 15, 19 and 20** the *Bhat* reference does not expressly disclose calculating bandwidth utilization.

The *Datta et al.* reference discloses calculating bandwidth utilization (**Figure 9, Col. 8 Lines 60-67, All of Columns 9-12, Col. 13 Lines 1-26**).

It would have been obvious, to one of ordinary skill in the art, at the time of the invention, to have modified the *Bhat* reference with the *Datta et al.* reference because (*motivation to combine*) the *Datta et al.* reference discloses a method of analyzing alternative configurations (**Col. 2 Lines 48-52**).

7. Dependent **Claims 21-23** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Bhat U.S. patent 5,668,995** in view of **Asawa U.S. Patent 6,108,800** and in further view of **Kutcher U.S. Patent 6,301,615** and in further view of “NETCAP: A tool for the Capacity Planning of Ethernet LANS” by **Lazarus Vekiarides and David Finkel** here after referred to as the *Vekiarides et al.* reference.

7.1 As regards the limitations of independent **Claim 1** see paragraph 3.1 above.

7.2 As regards dependent **Claims 21-23** the *Bhat* reference does not expressly disclose statistical analysis of processor, bandwidth and memory utilization.

The *Vekiarides et al.* reference discloses statistical analysis of processor, bandwidth and memory utilization (**All six pages including Figure 3-1**).

It would have been obvious, to one of ordinary skill in the art, at the time of the invention, to have modified the *Bhat* reference with the *Vekiarides et al.* reference because

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(*motivation to combine*) the *Vekiarides et al.* reference offers a method to increase accuracy in modeling network resource utilization (*Vekiarides et al.* reference, **Section 1.2 System Model**).

8. Dependent **Claims 5, 6, 7 and 8** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Bhat U.S. patent 5,668,995** in view of **Asawa U.S. Patent 6,108,800** and in further view of **Kutcher U.S. Patent 6,301,615** and in further view of **Schwaller et al. U.S. Patent 5,838,919**.

8.1 As regards independent **Claim 1** see paragraph 3.1 above.

8.2 As regards dependent **Claim 5** the *Bhat* reference does not expressly disclose running scripts.

The *Schwaller et al.* reference discloses running scripts (**Figure 7 Items 94, 96, 98, Col. 8 Lines 39-67, all of Columns 9-26**).

It would have been obvious, to one of ordinary skill in the art, at the time of the invention, to have modified the *Bhat* reference with the *Schwaller et al.* reference because (*motivation to combine*) the *Schwaller et al.* reference discloses a method to monitor a networks performance using multiple protocols that more accurately model network performance using actual network conditions (**Col. 3 Lines 10-26**). The *Schwaller et al.* reference is classified in the 709/224 Computer network monitoring section of the Classification manual. An artisan of the Networking Technology Art would be motivated to learn about the techniques disclosed in this area of technology. The Examiner asserts that this area of Information Technology is very competitive and therefore an artisan in this area of art would be motivated to improve the

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accuracy of the Network Monitoring and performance evaluation tools being used to measure a particular Network.

8.3 As regards dependent **Claims 6 and 7** the *Bhat* reference does not expressly disclose recalculating the load when the number of users is increased or running a script.

As regards the limitation of running a script (*see paragraph 9.2 above.*)

The *Asawa* reference discloses recalculating the load when the number of users is changed (**Figure 2 Item 66**).

It would have been obvious, to one of ordinary skill in the art, at the time of the invention, to have modified the *Bhat* reference with the *Asawa* reference because (*motivation to combine*) an artisan would be motivated to know of the techniques disclosed in the *Asawa* reference to ensure that the quality of service that the end users (*customers*) experience is good and to ensure that the users (*customers*) of these servers are able to quickly get E-Mail, transfer files and generally get their network service needs taken care of in a timely manner, (*Asawa Col. 1 Lines 12-60*). The Examiner asserts that Information Technology (**IT**) service hosting is a very competitive industry and that providing the ability to System Administrators to determine if their existing (**IT**) infrastructure can handle current and projected needs is very critical in being successful in the market place and therefore an artisan would be motivated to learn about the techniques disclosed in the *Asawa* reference.

8.4 As regards dependent **Claim 8** the *Bhat* reference discloses maximum load (**Col. 5 Lines 14-24**).

Allowable Subject Matter

9. **Claims 3, 9, 10, 29 and 34-37** are allowed.

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9.1 Claims 39-41 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

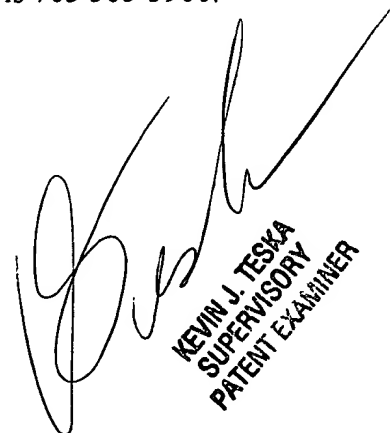
10. Independent Claims 3, 9, 10, 29, 34-37 are allowable over the prior art of record. Claims 39-41 are objected to as being based upon a rejected base claim. Claims 1,2 4-25, 26-28, 30-32 are rejected. This action is **NON-FINAL**.

10.1 Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dwin M Craig whose telephone number is 703 305-7150. The examiner can normally be reached on 9:00 - 5:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Teska can be reached on 703 305-9704. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7239 for regular communications and (703) 746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 305-3900.

DMC
December 13, 2003



KEVIN J. TESKA
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